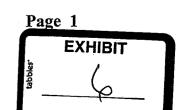
```
00001
  1
         IN THE UNITED STATES DISTRICT COURT
        FOR THE NORTHERN DISTRICT OF OKLAHOMA
  2
  3 W.A. DREW EDMONDSON, in his )
  capacity as ATTORNEY GENERAL )
 4 OF THE STATE OF OKLAHOMA and )
  OKLAHOMA SECRETARY OF THE )
 5 ENVIRONMENT C. MILES TOLBERT, )
  in his capacity as the
 6 TRUSTEE FOR NATURAL RESOURCES)
  FOR THE STATE OF OKLAHOMA )
 7
                  )
        Plaintiffs,
 8
  vs.
                    4:05-CV-00329-TCK-SAJ
 9
  TYSON FOODS, INC., et al., )
 10
                  )
        Defendants.
11
                  )
12
13
        VIDEOTAPED DEPOSITION OF KIRK HOUTCHENS
14
        Taken at the law offices of Mitchell, Williams,
15 Selig, Gates & Wooyard, 5414 Pinnacle Point Drive, Suite
16 500, Rogers, Arkansas 72758, on July 26, 2007, at 11:36
17 a.m.
18
19
20
21
22
23
24
25
```



- 1 THE VIDEOGRAPHER: The time is 11:36. This
- 2 is the beginning of tape 1 of the deposition of Kirk
- 3 Houtchens. We're on the record.
- 4 KIRK HOUTCHENS, having been called upon to
- 5 testify in the form of a deposition and having been duly
- 6 sworn, testified as follows, to wit:
- 7 EXAMINATION
- 8 BY MR. RIGGS:
- 9 Q. Would you state your full name for the record,
- 10 please?
- 11 A. Casey Kirk Houtchens.
- 12 Q. Mr. Houtchens, for whom are you employed?
- 13 A. Peterson Farms.
- 14 Q. What is your job with Peterson Farms?
- 15 A. I'm the live production manager.
- 16 Q. How long have you held that position?
- 17 A. Since February of '07.
- 18 Q. Were you employed by Peterson Farms prior to that
- 19 time?
- 20 A. Yes.
- 21 Q. What was your job just before assuming this current
- 22 job?
- 23 A. I was a broiler service technician and building
- 24 coordinator.
- 25 Q. How long have you worked for Peterson Farms?

- 1 A. I'm not sure of that, either.
- 2 Q. Since 1990, do you know whether the number of birds
- 3 produced there has increased or decreased?
- 4 A. No. I don't know, sir.
- 5 Q. Since 2000, do you know if the number of birds has
- 6 increased?
- 7 A. I believe it has.
- 8 Q. In the Illinois River Water --
- 9 A. (Witness nods head.)
- 10 Q. You have more birds being produced there now than --
- 11 than you did in 2000?
- 12 A. I believe so.
- 13 Q. Any idea how many more?
- 14 A. Not without looking at the number of houses before
- 15 and after, so I would just be speculating.
- 16 Q. So you don't have that with you today?
- 17 A. No, sir.
- 18 Q. Or do you? Is distance from the feed mill a factor
- 19 for Peterson in contracting with growers who raise
- 20 chickens?
- 21 A. It's one of them, yes.
- 22 Q. Okay. What are the others?
- 23 A. Well, I would say the most important is the actual
- 24 potential grower that we're talking to.
- 25 Q. Whether you -- in your judgment, that person would

- 1 be a good grower versus a not so good grower?
- 2 A. Correct. I mean, obviously, we wouldn't contract
- 3 with a grower in New York City.
- 4 Q. Right. How -- what is about the greatest distance a
- 5 grower -- Peterson grower could be from a feed mill --
- 6 from a Peterson feed mill?
- 7 A. I was going -- I'm pretty sure that's 50 miles
- 8 radius.
- 9 Q. Is there, like, a company policy? Since you said it
- 10 that way, it makes me think maybe there's sort of an
- 11 unwritten policy, 50 miles would be about the maximum
- 12 distance that a grower could be from a feed mill?
- 13 A. Are you asking me if there's a company policy?
- 14 Q. Yeah. Not necessarily a written policy, but is
- 15 there sort of an understanding within the company, That's
- 16 about as far away from our feed mills as any of our
- 17 growers should be?
- 18 A. About 50 miles is as far we'd like to.
- 19 Q. Okay. Do you know where the Buffalo River is in
- 20 Northwest Arkansas?
- 21 A. Fairly certain. In the general direction.
- 22 Q. Okay. Uh, the upper reaches of the Buffalo River,
- 23 say from Boxley to Ponca, Ponca to Prewitt, that area of
- 24 the Buffalo River?
- 25 A. I'm not really familiar with it, sir.

- 1 can be bagged and used for urban fertilizer. I mean,
- 2 there's -- there's other things.
- 3 Q. When the company first began entering into contracts
- 4 with the growers to raise its chickens, did the company
- 5 consider the poultry excrement and bedding material to
- 6 have value to -- for the grower?
- 7 A. Yes.
- 8 Q. It was beneficial to them then?
- 9 A. Yes.
- 10 Q. Was that part of the consideration in -- in the
- 11 contract that was entered into, and is it still today part
- 12 of the consideration for the growers to enter into the
- 13 contract?
- MR. McDANIEL: Object to the form. It calls
- 15 for a legal conclusion.
- 16 A. I don't quite follow you.
- 17 Q. (Mr. Riggs continued.) Okay.
- 18 A. Sorry about that.
- 19 Q. Okay. What do most of the growers with Peterson
- 20 contracts do with the poultry excrement and bedding
- 21 material removed from the houses?
- MR. McDANIEL: I object to the form.
- 23 A. Well, when you say, "most," I'll just assume you
- 24 mean what is the larger percentage or --
- 25 Q. (Mr. Riggs continued.) Yeah.

- 1 A. -- the majority.
- 2 Q. Right.
- 3 A. The majority of our independent growers -- well,
- 4 that is hard to answer. Our growers have to follow their
- 5 state-recommended nutrient management plans so depending
- 6 on what that is, whether they can land apply or they have
- 7 it removed or sell it to be taken to another area, another
- 8 watershed where it can be land applied.
- 9 Q. Uh-huh. Do you know from your experience dealing
- 10 with these growers what most of them do with it?
- MR. McDANIEL: Object to the form.
- 12 A. I don't know what most of them do with it. I know
- 13 the different things they do with it but not percentages.
- 14 Q. (Mr. Riggs continued.) Would you agree that a lot
- 15 of them spread it on pasture land, either theirs or some
- 16 pasture land nearby?
- 17 MR. McDANIEL: Object to the form.
- 18 A. Some -- I agree some do.
- 19 Q. (Mr. Riggs continued.) Would you agree that a lot
- 20 do?
- 21 MR. McDANIEL: Object to the form.
- 22 A. You know, anymore I'm not -- I'm not so sure if it's
- 23 even 50 percent now.
- 24 Q. (Mr. Riggs continued.) Okay. Before they were
- 25 required to have nutrient management plans, or waste

- 1 technically trained in soil scientists, that kind of
- 2 thing. It would be speculation --
- 3 Q. (Mr. Riggs continued.) Okay.
- 4 A. -- on my part.
- 5 Q. Does anyone in the company know more than you do
- 6 about the -- the application of poultry waste to -- to
- 7 pasture land in a safe way?
- 8 MR. McDANIEL: Object to the form.
- 9 A. No, there isn't.
- 10 Q. (Mr. Riggs continued.) In your experience, would
- 11 you agree that farmers are encouraged to apply poultry
- 12 waste to pasture lands for its nitrogen need even though
- 13 those soils would have no need for more phosphorus?
- MR. McDANIEL: Object to the form.
- 15 A. No. We don't. Our -- our growers are using their
- 16 nutrient management plans, and those are written based on
- 17 phosphorus index -- indexes.
- 18 Q. (Mr. Riggs continued.) Before your nutrient
- 19 management plans, would you say it's been true
- 20 historically for farmers to apply poultry waste for
- 21 nitrogen needs rather than -- or even though there were no
- 22 phosphorus needs in that soil?
- 23 MR. McDANIEL: Object to the form.
- 24 A. You know, it was -- your know, our plan's written by
- 25 both states were written based on nitrogen.

- 1 Q. (Mr. Riggs continued.) What I'm referring to --
- 2 excuse me. What I'm referring to is the application of
- 3 poultry waste to pasture land for nitrogen purposes in the
- 4 Illinois River Watershed even though there is no need for
- 5 the phosphorus in those soils.
- 6 MR. McDANIEL: Object to the form.
- 7 A. Peterson Farms requires our contract growers,
- 8 whether they're breeder growers or broiler growers, to
- 9 utilize the state's nutrient management plans so that
- 10 won't happen.
- 11 Q. (Mr. Riggs continued.) Let me hand you what you
- 12 we've just marked as Exhibit 8.
- 13 (Wherein, Plaintiff's Exhibit 8 was marked.)
- Do you recall whether -- it's a two-page exhibit.
- 15 The one -- the top page -- I believe the one you've got --
- 16 yes, is the enlargement of the actual document. The
- 17 actual document is page 2, but it's not very easy to read.
- 18 So let me ask you if you have seen that document
- 19 before?
- 20 A. No, I haven't.
- 21 Q. It does have Peterson Farms' name and logo on it.
- 22 Do you see that?
- 23 A. Yes, I do.
- 24 Q. Do you know what part, if anything -- any Peterson
- 25 Farms had in causing this document to be produced?

- 1 MR. McDANIEL: And I told you Miss Wilkerson
- 2 is prepared to talk about this ad.
- 3 MR. RIGGS: Okay.
- 4 Q. (Mr. Riggs continued.) Bullet point No. 4 says
- 5 another part of the proposal to improve the management of
- 6 poultry-related nutrients in the eastern Oklahoma Scenic
- 7 River Watersheds would be to implement other alternatives
- 8 for litter management such as turning it into fuel,
- 9 composting it for export, and processing it into an
- 10 organic fertilizer.
- How would that improve the watershed?
- MR. McDANIEL: Object to the form.
- 13 A. Well, I think it just goes back to the third bullet
- 14 point, we were just -- Peterson Farms is coming up or is
- 15 endorsing ways to have less amount of poultry litter
- 16 spread or land applied.
- 17 Q. (Mr. Riggs continued.) Okay. So how would that
- 18 help the scenic river watershed if less poultry litter
- 19 were applied in it?
- MR. McDANIEL: Object to the form.
- 21 A. Personally, I don't think it will help. It would --
- 22 if litter's being applied by our contract growers by what
- 23 the state law allows, whether it's Oklahoma or Arkansas,
- 24 there shouldn't be any pollution.
- 25 Q. (Mr. Riggs continued.) So are you in disagreement

- 1 A. Yes. Based on the way he's showing his title, I
- 2 would have to agree with that.
- 3 Q. Okay. This memo is dated November 24th, some three
- 4 or four months after the second one. This is the third
- 5 one. The first one was in March, and then July, and now
- 6 in November, all of 1998. Do you agree?
- 7 A. Yes.
- 8 Q. This one goes -- did go to Vic Evans and Dan
- 9 Henderson, Gene Wilmoth, and Janet Wilkerson. You've told
- 10 me who those people are. Those are fairly high level
- 11 executives within the Peterson company. Correct?
- 12 A. Yes.
- 13 Q. And this says, the very first sentence, "Time
- 14 continues to pass with no new solutions for dealing with
- 15 excess animal waste and environmental problems it is
- 16 creating."
- 17 Do you know when these memos were going to these
- 18 higher executives in the Peterson company what kind of
- 19 response Mr. Mullikin was getting from any of them?
- 20 A. No, I don't.
- 21 Q. Do you agree with Mr. Mullikin's statement in the
- 22 very first sentence of this memo to the president and
- 23 other high officers of the company that there is excess
- 24 animal waste and it is creating environmental problems?
- MR. McDANIEL: Object to the form.

- 1 A. No, I don't -- I don't know if I can agree with it
- 2 or not because this is just the memo that he wrote out to
- 3 send. I don't -- I haven't seen any scientific data or
- 4 any analysis to show that.
- 5 Q. (Mr. Riggs continued.) Did you know --
- 6 A. This was a --
- 7 Q. -- Mr. Mullikin? I'm sorry.
- 8 A. This is just his -- I believe his opinion.
- 9 Q. As the person in charge of environmental affairs
- 10 with the company?
- 11 A. I believe so.
- 12 Q. The last two sentences of this memo say, "The
- 13 solution may be one or a combination of these
- 14 technologies," referring to alternative uses, which is the
- 15 subject of the memo. Then he goes on to say, quote, Or it
- 16 may mean our industry must make some changes in the way we
- 17 do business."
- 18 Do you know what he meant by that?
- 19 A. No, I don't.
- 20 Q. Do you know if there was ever a discussion within
- 21 the company generated by these comments from Mr. Mullikin?
- 22 A. No, I don't.
- 23 Q. Since he made those remarks in writing to the higher
- 24 executives of Peterson some nine years ago, has the
- 25 industry changed the way it does business --

- 1 Q. Peterson growers are expected to remove the poultry
- 2 waste from their grow houses after certain periods of
- 3 time, aren't they?
- 4 MR. McDANIEL: Object to the form.
- 5 A. We're recommended to -- to clean out annually.
- 6 Q. (Mr. Riggs continued.) How could -- how long are
- 7 they allowed to go without removing the poultry waste from
- 8 the grow house?
- 9 MR. McDANIEL: Object to the form.
- 10 A. We don't have any set position on that.
- 11 Q. (Mr. Riggs continued.) What is their
- 12 recommendation, as you put it?
- 13 A. Annually.
- 14 Q. Annually. What happens if the waste continues to
- 15 accumulate in the -- in the house beyond a year?
- 16 A. Well, depends on how tall their concrete footers
- 17 are, the footers on their houses. So you can't go more
- 18 than it starts getting above your footings, which I don't
- 19 have an exact data on that.
- 20 Q. So most typical houses, how long would -- would that
- 21 be if beyond a year?
- 22 A. Two years.
- 23 Q. So does it harm the chickens for the grower to not
- 24 clean out at least annually?
- 25 A. They get more -- they get more challenged built up

- 1 in that house from pathogens, so it can harm the -- the
- 2 birds and the -- the growers profitability if he leaves
- 3 that bedding in there too long. Or bedding.
- 4 Q. Could a grower lose his right under the contract to
- 5 get more chickens to grow if he waited too long to remove
- 6 the waste from his chicken houses?
- 7 A. Not that I'm aware of in the contract.
- 8 Q. Even though he went longer than he should, you would
- 9 continue to bring chickens to the floor?
- 10 A. Well, basically, David, they wouldn't be able get
- 11 the loader in the houses.
- 12 Q. Okay.
- 13 A. But, I mean, that's being obvious. That's an
- 14 obvious fact. You know, I don't believe there's anywhere
- 15 in our contract that says they will get terminated,
- 16 they'll lose their contract if they don't clean out their
- 17 litter.
- 18 Q. So if they didn't have a suitable storage facility
- 19 for the waste outside the house, you wouldn't insist that
- 20 they remove it anyway?
- 21 A. Well, our storage facilities are not for cleaning
- 22 out litter, they're for de-cake.
- 23 Q. Okay. That's where you take the top off of it?
- 24 A. Uh-huh. We -- we don't have large enough storage to
- 25 completely clean it out.